

1 BILL LOCKYER
Attorney General
2 VIVIEN HARA HERSH
Supervising Deputy Attorney General
3 SUSAN K. MEADOWS
Deputy Attorney General
4 State Bar No.115092
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102
Telephone: (415) 703-5552
6 Fax: (415) 703-5408
Attorneys for Complainant
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8
9 **BEFORE THE**
PHYSICAL THERAPY BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11
12 **CASE NO. 1D 2003 63698**

13 **In the Matter of the Accusation Against:**

ACCUSATION

14 **ARTHUR WILLIAM MATTMILLER, PT**
43 Ironship Plaza
San Francisco, CA 94411

15 **License No. PT 6447**

16 **Respondent,**
17

18
19 The Complainant alleges:

20 **PARTIES**

21 1. Complainant, Steven K. Hartzell, is the Executive Officer of the Physical Therapy
22 Board of California (hereinafter the "Board") and brings this accusation solely in his official
23 capacity.

24 2. On or about July 27, 1973, the Board issued Physical Therapy License No. PT 6447 to
25 Arthur William Mattmiller, PT ("respondent"). The license expires on May 31, 2005 unless
26 renewed. Respondent has no prior history of disciplinary action against his license.

27 **JURISDICTION**

28 3. This accusation is brought before the Board under the authority of the following

1 sections of the California Business and Professions Code (hereinafter “Code”):

2 A. Section 118 (b) of the Code provides, in relevant part, that the suspension, expiration,
3 or forfeiture by operation of law of a license issued by a board in the department, or its
4 suspension, forfeiture, or cancellation by the order of the board or by order of a court of law or its
5 surrender without the written consent of the board, shall not, during any period in which it may
6 be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or
7 continue a disciplinary proceeding against the licensee upon any ground provided by law or to
8 enter an order suspending or revoking the license or otherwise taking disciplinary action against
9 the licensee on any such ground.

10 B. Section 2608.5 of the Code provides:

11 Each member of the board, or any physical therapist appointed by the board, may inspect,
12 or require reports from, a general or specialized hospital or any other facility providing physical
13 therapy care, treatment or services and the physical therapy staff thereof, with respect to the
14 physical therapy care, treatment, services, or facilities provided therein, and may inspect physical
15 therapy patient records with respect to the care, treatment, services, or facilities. The authority to
16 make inspections and to require reports as provided by this section shall not be delegated by a
17 member of the board to any person other than a physical therapist and shall be subject to the
18 restrictions against disclosure described in Section 2263.

19 C. Section 2630 of the Code provides:

20 It is unlawful for any person or persons to practice, or offer to practice, physical therapy
21 in this state for compensation received or expected, or to hold himself or herself out as a physical
22 therapist, unless at the time of so doing the person holds a valid, unexpired, and unrevoked
23 license issued under this chapter. Nothing in this section shall restrict the activities authorized by
24 their licenses on the part of any persons licensed under this code or any initiative act, or the
25 activities authorized to be performed pursuant to Article 4.5 (commencing with section 2655) or
26 Chapter 7.7 (commencing with section 3500). A physical therapist licensed pursuant to this
27 chapter may utilize the services of one aide engaged in patient-related tasks to assist the physical
28 therapist in his or her practice of physical therapy. “Patient-related task” means a physical

1 therapy service rendered directly to the patient by an aide, excluding non-patient-related tasks.
2 “Non-patient-related task” means a task related to observation of the patient, transport of the
3 patient, physical support only during gait or transfer training, housekeeping duties, clerical
4 duties, and similar functions. The aide shall at all times be under the orders, direction, and
5 immediate supervision of the physical therapist. Nothing in this section shall authorize an aide to
6 independently perform physical therapy or any physical therapy procedure. The board shall
7 adopt regulations that set forth the standards and requirements for the orders, direction, and
8 immediate supervision of an aide by a physical therapist. The physical therapist shall provide
9 continuous and immediate supervision of the aide. The physical therapist shall be in the same
10 facility as, and in proximity to, the location where the aide is performing patient-related tasks,
11 and shall be readily available at all times to provide advice or instructions to the aide. When
12 patient-related tasks are provided to a patient by an aide, the supervising physical therapist shall,
13 at some point during the treatment day, provide direct service to the patient as treatment for the
14 patient’s condition, or to further evaluate and monitor the patient’s progress, and shall
15 correspondingly document the patient’s record. The administration of massage, external baths,
16 or normal exercise not a part of a physical therapy treatment shall not be prohibited by this
17 section.

18 D. Section 2620.7 of the Code provides:

19 (a) A physical therapist shall document his or her evaluation, goals, treatment
20 plan, and summary of treatment in the patient record.

21 (b) A physical therapist shall document the care actually provided to a patient in
22 the patient record.

23 (c) A physical therapist shall sign the patient record legibly.

24 (d) Patient records shall be maintained for a period of no less than seven years
25 following the discharge of the patient, except that the records of unemancipated minors
26 shall be maintained at least one year after the minor has reached the age of 18 years, and
27 not in any case less than seven years.
28

1 E. Section 726 of the Code provides:

2 The commission of any act of sexual abuse, misconduct, or relations with a patient, client,
3 or customer constitutes unprofessional conduct and grounds for disciplinary action for any person
4 licensed under this division, under any initiative act referred to in this division and under Chapter
5 17 (commencing with section 9000) of Division 3.

6 F. Section 2660.1 of the Code provides:

7 A patient, client, or customer of a licensee under this chapter is conclusively presumed
8 to be incapable of giving free, full, and informed consent to any sexual activity which is a
9 violation of 726.

10 G. Section 2660 of the Code provides, in pertinent part, that the Board may suspend,
11 revoke or impose probationary conditions upon any license for unprofessional conduct that
12 includes, ***but is not limited to***, one or any combination of the following causes:

13 (h) Gross negligence in his or her practice as a physical therapist or physical
14 therapy assistant.

15 (i) Violating or attempting to violate directly or indirectly, . . . any provision
16 or term of this chapter or of the ***State Medical Practice Act***. {emphasis added}

17 (j) The aiding or abetting of any person to violate this chapter or any regulations
18 duly adopted under this chapter.

19 (k) The aiding or abetting of any person to engage in the unlawful practice of
20 physical therapy.

21 (l) The commission of any fraudulent, dishonest, or corrupt act which is
22 substantially related to the qualifications, functions, or duties of a physical therapist.

23 (n) The commission of verbal abuse or sexual harassment.

24 H. Title 16, Section 1398.11 of the California Code of Regulations (hereinafter “CCR”)
25 provides:

26 Pursuant to Section 680 of the Code, each supervising licensed physical therapist shall
27 require all physical therapy aides, applicants, students and interns performing patient related
28 tasks under his or her supervision to display while working his or her name and working title on

1 a name tag in at least 18-point type.

2 I. Title 16, Section 1399 of the CCR provides:

3 A physical therapy aide is an unlicensed person who assists a physical therapist and may
4 be utilized by a physical therapist in his or her practice by performing nonpatient related tasks, or
5 by performing patient related tasks.

6 (a) As used in these regulations:

7 (1) A “patient related task” means a physical therapy service rendered
8 directly to the patient by an aide, excluding nonpatient related tasks as defined
9 below.

10 (2) A “nonpatient related task” means a task related to observation of the
11 patient, transport of patients, physical support only during gait or transfer training,
12 housekeeping duties, clerical duties and similar functions.

13 (b) “Under the orders, direction and immediate supervision” means:

14 (1) Prior to the initiation of care, the physical therapist shall evaluate
15 every patient prior to the performance of any patient related tasks by the aide. The
16 evaluation shall be documented in the patient’s record.

17 (2) The physical therapist shall formulate and record in the patient’s
18 record a treatment program based upon the evaluation and any other information
19 available to the physical therapist, and shall determine those patient related tasks
20 which may be assigned to an aide. The patient’s record shall reflect those patient
21 related tasks that were rendered by the aide, including the signature of the aide
22 who performed those tasks.

23 (3) The physical therapist shall assign only those patient related tasks that
24 can be safely and effectively performed by the aide. The supervising physical
25 therapist shall be responsible at all times for the conduct of the aide while he or
26 she is on duty.

27 (4) The physical therapist shall provide continuous and immediate
28 supervision of the aide. The physical therapist shall be in the same facility as and

1 in immediate proximity to the location where the aide is performing patient
2 related tasks, and shall be readily available at all times to provide advice or
3 instruction to the aide. When patient related tasks are provided to a patient by an
4 aide the supervising physical therapist shall at some point during the treatment day
5 provide direct service to the patient as treatment for the patient's condition or to
6 further evaluate and monitor the patient's progress, and so document in the
7 patient's record.

8 (5) The physical therapist shall perform periodic re-evaluation of the
9 patient as necessary and make adjustments in the patient's treatment program.
10 The re-evaluation shall be documented in the patient's record.

11 (6) The supervising physical therapist shall countersign with their first
12 initial and last name, and date all entries in the patient's record, on the same day
13 as patient related tasks were provided by the aide.

14 **COSTS**

15 4. Section 2661.5 of the Code provides, in part, that the Board may request the
16 administrative law judge to direct any licensee found to have committed unprofessional conduct
17 to pay the Board a sum not to exceed the actual and reasonable costs of the investigation and
18 prosecution of the case.

19 **FIRST CAUSE FOR DISCIPLINARY ACTION**

20 **(Sexual Misconduct, Sexual Harassment, Unprofessional Conduct, Gross Negligence)**

21 5. On or about November 4, 2003, respondent undertook to treat patient, L.L.^{1/} who
22 suffered from an IT Band injury and required physical therapy. During this visit, respondent
23 performed physical therapy exercises on her leg. L.L. changed into jogging shorts and
24 respondent watched her jog on the treadmill. During this visit, a physical therapy aide,
25 "Leonard" began to do some exercises with L.L. while respondent was working with other
26 patients. "Leonard" gave L.L. a stretch band and exercise diagrams and respondent suggested
27

28 1. Initials are used to protect the patient's right to privacy. The identity of the patient
will be disclosed to respondent pursuant to any request for discovery.

1 that L.L. buy new running shoes. L.L. did not receive diathermy treatment during this visit. L.L.
2 made another appointment for November 6, 2003.

3 6. On or about November 6, 2003, L.L. returned to respondent's office for physical
4 therapy. She was greeted by "Leonard" who gave her a medical gown to put on because she had
5 forgotten to bring her running shorts. After putting on the gown, L.L. was told to go to a room
6 where there were therapy tables and was told to lie down on one of the tables. There was a male
7 patient on one of the other therapy tables, however, the two tables were separated by a medical
8 folding screen. Respondent asked L.L. to lie on her left side with her back side facing him.
9 Respondent moved close to her hip and moved his hand under her gown to her hip and began
10 rubbing her hip area. L. was wearing G-string underwear and there was no clothing between
11 respondent's hand and her skin while he rubbed her hip and leg. At some point during this
12 massage, respondent sat on the table and placed L.L.'s legs on his lap, and continued to rub her
13 hip and leg while she was lying on her side facing the opposite wall. Respondent did not tell L.L.
14 what he was doing and he did not say anything. When respondent was finished massaging her
15 hip and leg, he jumped off the table, smacked her on her buttocks, then patted her head and told
16 her he would send "Len" in to do some heat work. L.L. felt very uncomfortable with
17 respondents's actions.

18 7. After respondent left the room, "Leonard" came in and used a heat machine
19 (diathermy) on her hip. After the diathermy treatment, L.L. got dressed to leave the office.
20 "Leonard" told her to continue with her exercises. As she was leaving, respondent, who was
21 sitting behind a desk, looked up at her, smiled and said "Thank you for letting me have my way
22 with you". L.L. was very upset and did not return to respondent for any further treatment.

23 8. Respondent's conduct while treating L.L. and as set forth in paragraphs 6 through 8,
24 inclusive, constitutes unprofessional conduct under section 2660 of the Code, and/or sexual
25 misconduct under section 726 of the Code and/or sexual harassment under section 2660 (n) of
26 the Code and/or gross negligence under section 2660(h) of the Code. Therefore, cause for
27 discipline exists.

1 **SECOND CAUSE FOR DISCIPLINARY ACTION**

2 **(Patient L.L.)**

3 **(Gross Negligence and/or Unprofessional Conduct and/or**
4 **Dishonest and Corrupt Acts, Unlawful Practice of Physical Therapy)**

5 9. The allegations of paragraphs 5 through 7, inclusive, are incorporated herein as if fully
6 set forth.

7 10. During the time that respondent treated L.L., his license was expired. In fact,
8 respondent treated patients with an expired license from May of 2003 until January of 2004 in
9 violation of section 2630 of the Code (unlawful practice of physical therapy) and/or section
10 2660(i) (violating or attempting to violate any term of this chapter or regulation duly adopted
11 under this chapter). Respondent's conduct constitutes the unlawful practice of physical therapy,
12 and/or unprofessional conduct. Therefore, cause for discipline exists.

13 11. On or about January 27, 2003, pursuant to section 2608.5 of the Code, a board
14 appointed physical therapist, D.E., conducted an onsite inspection of respondent's physical
15 therapy practice. During the interview with the Board investigator and D.E., respondent stated
16 that he was the only person who treated L.L. during her physical therapy visits. In fact, however,
17 "Leonard", an aide provided some physical therapy treatments to L.L. on both visits.
18 Respondent's fraudulent statement to the Board investigator and evaluator constitutes the
19 commission of dishonest and/or corrupt and/or fraudulent acts, and/or unprofessional conduct
20 under section 2660(l) and/or section 2660 of the Code. Therefore, cause for discipline exists.

21 12. During L.L.'s visits on the November 4, 2003 and November 6, 2003, respondent
22 failed to properly supervise his physical therapy aide, "Leonard," in the documentation and
23 performance of treatments for L.L. and in so doing violated section 2620.7 of the Code (failure to
24 maintain adequate patient record) and/or section 2660 (j) (aiding and abetting his physical
25 therapy aide to violate this chapter and regulations under the chapter) and/or section 2660(k)
26 (aiding and abetting any person to engage in the unlawful practice of physical therapy) and/or
27 section 1399(b)(2) of Title 16 of the CCR (the patient's record shall reflect those patient related
28 tasks that were rendered by the aide, including the signature of the aide who performed those

tasks) and/or section 2660(h) (gross negligence) in that in L.L.'s record there is no notation that patient related tasks, exercises, and diathermy treatment were rendered by "Leonard" a physical therapy aide employed by respondent. Therefore, cause for discipline exists.

THIRD CAUSE FOR DISCIPLINE

(Patient A)

(Violating Chapter or Regulations, and/or Aiding and Abetting the Practice of Physical Therapy and/or Aiding or Abetting Another Person to Violate the Chapter or Regulations)

13. On or about January 27, 2004, pursuant to section 2608.5 of the Code, a board appointed physical therapist, D.E., conducted an onsite inspection of respondent's physical therapy practice. During that visit, D.E. observed an aide "Marion" massaging patient A. This massage by the aide is not reflected in this patient's chart for January 27, 2004 as required under section 2620.7 of the Code and Title 16, Section 1399(b) of the CCR. In addition, this patient's chart contains no referral or other documentation to establish a medical diagnosis and the evaluation is mostly illegible in violation of section 2620.7 of the Code. In addition, D.E. observed that neither "Marion", an aide, nor "Leonard", an aide, nor respondent were wearing appropriate name tags present on their person in violation of Title 16, section 1398.11 of the CCR.

14. With respect to each of the above referenced violations alleged in paragraph 13 above, whether proven individually or jointly, cause for discipline exists pursuant to section 2660(i) (violating or attempting to violate any term of this chapter or regulation) and/or 2660(j) aiding and abetting of any person to violate this chapter or any regulations duly adopted under this chapter) and/or section 2660(l) (gross negligence). Therefore, cause for discipline exists.

FOURTH CAUSE FOR DISCIPLINE

Patient B

(Violating Chapter or Regulations, and/or Aiding and Abetting the Practice of Physical Therapy and/or Aiding or Abetting Another Person to Violate the Chapter or Regulations)

15. On or about January 27, 2003, pursuant to section 2608.5 of the Code, a board appointed physical therapist, D.E., conducted an onsite inspection of respondent's physical

1 therapy practice. During this visit, D.E. observed “Leonard” supervising exercises with Patient
2 B., however, there is no documentation of “Leonard’s” involvement with this patient in Patient
3 B’s chart in violation of section 2620.7 of the Code (failure to maintain adequate patient record)
4 and/or section 2660 (j) (aiding and abetting a physical therapy aide to violate this chapter and
5 regulations duly adopted under the chapter) and/or section 1399(b)(2) of Title 16 of the CCR (the
6 patient’s record shall reflect those patient related tasks that were rendered by the aide, including
7 the signature of the aide who performed those tasks) and/or section 2660(i) (violating or
8 attempting to violate any term of this chapter or regulation). Therefore, cause for discipline
9 exists.

10 16. D.E. observed that this patient’s chart contains no referral or other documentation to
11 establish a medical diagnosis and the evaluation is mostly illegible in violation of section 2620.7
12 of the Code. Respondent’s conduct and/or omissions as alleged above constitute cause for
13 discipline pursuant to section 2660(i) of the Code (violating or attempting to violate any term of
14 this chapter or regulation).

15 **FIFTH CAUSE FOR DISCIPLINE**

16 **(Patient C)**

17 **(Violating Chapter or Regulations, and/or Aiding and Abetting the Practice of Physical** 18 **Therapy and/or Aiding or Abetting Another Person to Violate the Chapter or Regulations)**

19 17. On or about January 27, 2004, pursuant to section 2608.5 of the Code, a board
20 appointed physical therapist, D.E., conducted an onsite inspection of respondent’s physical
21 therapy practice. During that visit, he observed two different handwriting styles in patient C’s
22 chart but only one signature. D.E. also noted that the evaluation performed on January 14, 2004
23 was illegible and substandard in that no objective measurements to establish baselines for the
24 patient’s status are found, there is no referral or other documentation to establish a medical
25 diagnosis, and no discharge summary is present.

26 18. Whether proven singularly or jointly, respondent’s conduct and/or omissions alleged
27 above constitute violations of section 2620.7 of the Code (failure to maintain adequate patient
28 record) and/or section 2660 (j) (aiding and abetting a physical therapy aide to violate this chapter

1 and regulations duly adopted under the chapter) and/or section 1399(b)(2) of Title 16 of the CCR
2 (the patient's record shall reflect those patient related tasks that were rendered by the aide,
3 including the signature of the aide who performed those tasks) and/or section 2660(i) (violating
4 or attempting to violate any term of this chapter or regulation). Therefore, cause for discipline
5 exists.

6 SIXTH CAUSE FOR DISCIPLINE

7 (Patient D)

8 **(Violating Chapter or Regulations, and/or Aiding and Abetting the Practice of Physical 9 Therapy and/or Aiding or Abetting Another Person to Violate the Chapter or Regulations)**

10 19. On or about January 27, 2003, pursuant to section 2608.5 of the Code, a board
11 appointed physical therapist, D.E., conducted an onsite inspection of respondent's physical
12 therapy practice. During that visit, he observed two different handwriting styles in patient D's
13 chart but only one signature. Respondent was advised at that time of the regulations requiring
14 entries and signature by all parties providing care to the patients. When D.E. reviewed patient
15 D's chart provided to him in June of 2004, he noted that on February 3, 2004, patient D's chart
16 once again contained two different handwriting styles but only one signature. Patient D's chart
17 was mostly illegible, the medical diagnosis/referral was missing, and no discharge summary was
18 found.

19 20. Respondent's conduct and/or omissions as alleged above, whether proven singularly
20 or jointly, constitute violations of section 2620.7 of the Code (failure to maintain adequate
21 patient record) and/or section 2660(j) (aiding and abetting a physical therapy aide to violate this
22 chapter and regulations duly adopted under the chapter) and/or section 1399(b)(2) of Title 16 of
23 the CCR (the patient's record shall reflect those patient related tasks that were rendered by the
24 aide, including the signature of the aide who performed those tasks) and/or section 2660(i)
25 (violating or attempting to violate any term of this chapter or regulation). Therefore, cause for
26 discipline exists.

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PRAYER

WHEREFORE, the complaint request that a hearing be held on the matters herein alleged, and that following the hearing the Board issue a decision:

- 1. Revoking or suspending License Number PT 6477 issued to respondent Arthur William Mattmiller:
- 2. Ordering respondent to pay the Board the reasonable costs of the investigation and enforcement of this case;
- 3. Ordering respondent to pay any and all costs associated with probation monitoring should respondent be placed on probation; and,
- 4. Taking such other and further action as the Board deems necessary and proper.

DATED: April 4, 2005

Original Signed By: _____
STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California

Mattmiller.Acc